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**UNITED STATES DISTRICT COURT**

**FOR THE DISTRICT OF NEVADA**

ECOLAB, INC.	)	Case No. 2:16-CV-02679-APG-CWH
	)	
Plaintiff,	)	<b>DECLARATION OF SEAN SMITH</b>
	)	<b>IN SUPPORT OF PLAINTIFF'S</b>
vs.	)	<b>MOTION FOR PRELIMINARY</b>
	)	<b>INJUNCTION</b>
JONATHAN KRASNER,	)	
LUKE ATWELL, and REBEL	)	
CHEMICAL, INC.	)	
	)	
Defendants.	)	
_____	)	

1 I, SEAN SMITH, declare as follows:

2 1. I am the Assistant Vice President, Institutional Field Sales, Pacific  
3 Southwest Area, for Plaintiff Ecolab, Inc. (hereafter "Ecolab"). I have personal  
4 knowledge of the facts stated herein, and if called upon to testify, I could do so  
5 competently.

6 2. Plaintiff Ecolab is engaged in the highly competitive business of  
7 providing commercial hygiene products and services including, but not limited to,  
8 products such as dishwashers, laundry, housekeeping equipment, soap, sanitizing and  
9 cleaning products to a broad spectrum of businesses such as restaurants, hotels, and  
10 schools.

11 3. In order to protect its confidential information and customer  
12 relationships, Ecolab, among other things, requires appropriate employees to execute  
13 employment agreements containing restrictive covenants tailored to protect those  
14 valuable company assets.

15 4. Defendant Krasner worked for Ecolab as an Ecolab District Sales  
16 Manager. As a condition of his employment with Ecolab, Defendant Krasner executed an  
17 Employee Agreement with Ecolab on February 26, 2010 which contains restrictive covenants  
18 concerning confidentiality and return of property. A true and correct copy of Krasner's  
19 Employee Agreement is attached hereto as **Exhibit "1", pp. 3-4.**

20 5. Defendant Atwell worked for Ecolab as a Street Sales Development  
21 Manager. As a condition of his employment with Ecolab, Defendant Atwell executed an  
22 Employee Agreement with Ecolab on September 30, 2011 which contains restrictive covenants  
23 concerning confidentiality and return of property. A true and correct copy of Atwell's Employee  
24 Agreement is attached hereto as **Exhibit "2", pp. 6-7.**

25 6. Both Defendant Krasner and Defendant Atwell had access to Ecolab's  
26 confidential business information. The confidential business information to which  
27 Defendants Krasner and Atwell had access to (and did not return upon their departure  
28 from Ecolab) includes specific contract pricing lists for current Ecolab contracts and

1 accounts; customer listings and information for all districts within the Las Vegas area  
2 market; proposals to current and potential Ecolab customers; Ecolab employee lists  
3 and contact information; Ecolab sales reports which detail customer spending and profit  
4 and loss data; proprietary equipment pricing; Ecolab Distributor lists and stocking  
5 reports; Ecolab offerings related to what Ecolab sells; Ecolab sales training materials  
6 and how to solicit and interact with current and potential clients; and proprietary  
7 information regarding industry information such as chemical titrations and use cost  
8 information.

9 7. Defendant Krasner's and Defendant Atwell's Employee Agreements contain a  
10 non-solicitation covenant which provides as follows:

11  
12 During employment with the Company and for a period of one (1) year  
13 immediately following the termination of his employment with the Company,  
14 the Employee will not service, sell or solicit the sale of any COMPETING  
15 PRODUCTS or COMPETING SERVICES to any customer of the Company  
16 with whom the Employee did business or attempted to do business, or whose  
17 accounts was supervised by or assigned to the Employee or with regard to which  
18 the Employee received commissions or other compensation, at any time during  
19 the twelve (12) month period immediately preceding the termination of his  
20 employment. During said one year following termination, the Employee also  
21 will not assist any COMPETING FIRM to engage in the activities prohibited  
22 by the foregoing sentence. A COMPETING FIRM means any person or  
23 organization (including one owned in whole or in part by the Employee) which  
24 is engaged in the development, production, use, marketing or sale of a  
25 COMPETING PRODUCT or COMPETING SERVICE. A COMPETING  
26 PRODUCT or COMPETING SERVICE means any product or service which  
27 is the same as, or similar to, and competes with, a product or service of the  
28 Company which was part of the product or service line handled by the  
Employee, or persons supervised by the Employees, or about which the  
Employee received CONFIDENTIAL INFORMATION during his last two (2)  
years of employment by the Company.

8. Defendant Krasner and Defendant Atwell's Employee Agreements contain a  
confidentiality covenant which provides as follows:

The Employee will not at any time, both during and for one (1) year  
immediately after his employment by the Company, communicate or  
disclosure to any person, firm or corporation, or use for his benefit or for the  
benefit of any other person, firm or corporation, directly or indirectly, any of

1 the Company's CONFIDENTIAL INFORMATION acquired by the Employee  
2 while employed by the Company.

3 9. Defendants Krasner and Atwell voluntarily resigned from their  
4 employment with Ecolab. Upon submitting their resignations, Defendants Krasner and  
5 Atwell refused to advise Ecolab of their career plans.

6 10. Shortly after Defendant Krasner's and Atwell's departure, they joined  
7 with another former Ecolab employee, Robert Burton. Together, Krasner, Atwell, and  
8 Burton created a new company called Rebel Chemical.

9 11. Rebel Chemical directly competes with Ecolab by offering commercial  
10 hygiene products and services in the Las Vegas market.

11 12. While at Ecolab, Defendant Krasner, a District Sales Manager, directly managed  
12 Defendant Atwell, a Street Sales Development Manager. Defendant Krasner was only directly  
13 involved in selling to one of four Ecolab geographic districts in the Las Vegas market while he  
14 was a District Sales Manager. Defendant Atwell was involved in and called on clients and  
15 potential clients in all four Ecolab Las Vegas Districts. However, at Rebel Chemical, Defendants  
16 Krasner and Atwell have switched roles, such that Defendant Krasner is now directly selling to  
17 clients in parts of town which he did not oversee as Ecolab District Sales Manager and Defendant  
18 Atwell has taken a more managerial role in an apparent attempt to avoid the appearance that he  
19 is selling to clients he previously called on while at Ecolab.

20 13. Upon resigning from Ecolab, Defendant Atwell and Defendant Krasner  
21 were contractually obligated to return to Ecolab all of its property including Company  
22 confidential information.

23 14. Defendant Krasner did not return any company information whatsoever  
24 including hard copies of documents and/or in electronic form. Defendant Krasner also  
25 improperly erased and/or deleted Ecolab company information from his company issued  
26 computer.

27 15. Defendant Atwell likewise did not any return Ecolab confidential  
28 information, including information that he had sent to his personal e-mail address

1 without authorization, and in violation of Company policy. Defendant Atwell also  
2 failed to return an Ecolab badge which allowed him to gain access to a vendor at a local  
3 airport as a purported Ecolab employee.

4 16. Defendant Atwell, shortly before his departure from Ecolab and during  
5 work time, sent confidential Company information to his personal e-mail address in  
6 violation of Company policy and in breach of his fiduciary duties owed to Ecolab.

7 17. Among the e-mails improperly sent by Defendant Atwell to his personal  
8 e-mail address were an e-mail he sent just hours before his departure on his last day at  
9 Ecolab which contained Ecolab confidential business information including customer  
10 identities and contact information, a true and correct copy of which is attached as  
11 **Exhibit “3”, pp. 9-10.**

12 18. Another email that Defendant Atwell sent to himself was an e-mail survey  
13 of photos take at customer location, a true and correct copy of which is attached as  
14 **Exhibit “4”, pp. 12-46.**

15 19. Defendant Atwell also sent himself a hygiene survey for a large hotel  
16 customer which contained detailed information regarding the customer’s needs and  
17 requirements, a true and correct copy of which is attached as **Exhibit “5”, pp. 48-50.**

18 20. Defendant Atwell also sent himself multiple e-mails to his personal e-mail  
19 address containing customer agreements containing, among other things, pricing  
20 information and contractual terms including information when the product and/or  
21 service agreement would expire, true and correct copies of examples of which are  
22 attached as **Exhibit “6”, pp. 52-78.**

23 21. Defendant Atwell just prior to his departure sent without any apparent  
24 legitimate business purpose an e-mail to Defendant Krasner containing a prospect list  
25 identifying customers and information concerning them, a true and correct copy of  
26 which is attached as **Exhibit “7”, pp. 80-82.** This email was especially bizarre because  
27 Defendant Atwell forwarded to Defendant Krasner a list of customers for a different  
28

1 district than the one that Defendant Krasner managed. There was no purpose for  
2 Defendant Krasner to have access to such a list, especially weeks before his planned  
3 departure from Ecolab.

4 22. Defendants Krasner and Atwell have solicited Ecolab customers on behalf  
5 of Defendant Rebel Chemical, Inc., in violation of the non-solicitation covenant of their  
6 Employment Agreements, and they have used Ecolab Confidential Information in violation  
7 of the confidentiality covenant of their Employment Agreements.

8 23. Specifically, at the time of their respective resignations from Ecolab,  
9 Defendant Krasner was responsible for accounts that generated revenues for Ecolab of  
10 approximately \$8 million annually, and Defendant Atwell was responsible for accounts  
11 that generated revenues for Ecolab of approximately \$1 million annually, which included  
12 sales volume of approximately \$500,000.00 and another approximately \$500,000.00 in  
13 accounts on which he was actively working. Defendant Krasner and Defendant Atwell  
14 had access to Confidential Information regarding these accounts.

15 24. Indeed, in the short time that Rebel Chemical has been in operation,  
16 the Company operated by Krasner and Atwell has already converted numerous Ecolab  
17 clients.

18 25. For example, Rebel Chemical converted Ecolab client Pot Liquor. On or  
19 about November 8, 2016, Defendant Krasner called Ecolab customer service and  
20 informed Ecolab customer service that Defendant Krasner had just sold this account and  
21 that Ecolab would no longer be servicing the account and should pick up its equipment.  
22 Defendant Krasner sold to Pot Liquor while he was at Ecolab. The value of the Pot Liquor  
23 account is approximately \$15,000.00 annually.

24 26. As another example, on or about November 11, 2016, Defendant Krasner  
25 again called Ecolab Customer service and instructed Ecolab to pick up its equipment which  
26 serviced Ecolab client Bratalian because Defendant Krasner had just also sold that account  
27 for Rebel Chemical. The value of the Bratalian contract is approximately \$4,000.00  
28 annually.

1           27. Defendants have also worked to convert Ecolab customer Greens and  
2 Proteins. Defendant Krasner was in charge of selling to Greens and Proteins when he  
3 was at Ecolab. Since joining Rebel Chemical, Defendant Krasner has already sold  
4 directly to one Greens and Proteins location, in direct violation of his Employment  
5 agreement. On December 28, 2016, Defendant Krasner called Ecolab customer service  
6 and told them to pick up their equipment. The value of the Greens & Proteins account is  
7 approximately \$30,000.00 annually.

8           28. Defendants have also converted Ecolab client Herbs & Rye. The value of  
9 the Herbs & Rye contract was approximately \$30,000.00 annually.

10           29. More recently, Defendant Rebel Chemical approached a multi-unit  
11 customer to which Defendant Atwell was responsible for selling to while with Ecolab. A  
12 true and correct copy of Rebel Chemical's proposal to this Ecolab customer is attached  
13 as **Exhibit "8", pp. 83-89**.

14           30. Other Ecolab accounts that Defendants have called on and worked to  
15 convert include Andres, I love Sushi, Blueberry Hill Group, and Cabo-Wabo-Hex-  
16 Chateau.

17  
18           I declare under penalty of perjury under the laws of the United States of America  
19 that the foregoing is true and correct. Executed this 11th day of January, 2017, at Las  
20 Vegas, Nevada.

21  
22 

23 SEAN SMITH  
24  
25  
26  
27  
28

**CERTIFICATE OF ELECTRONIC SERVICE**

This is to certify that on the 11th day of January, 2017, the undersigned, an employee of Fisher & Phillips LLP, electronically filed the foregoing **DECLARATION OF SEAN SMITH IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION** with the U.S. District Court, and a copy was electronically transmitted from the court to the e-mail address on file for:

Brian K. Berman, Esq.

By: /s/ Brenna Kacsuta  
An employee of Fisher & Phillips LLP